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DESEGREGATION, A NEW APPROACH, A NEW DEADLINE.

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THIS ARTICLE DESCRIBES THE POLICY OF THE U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE FOR ENFORCING SCHOOL DESEGREGATION GUIDELINES. THE NEW GOAL SET BY THE U.S. OFFICE OF EDUCATION'S COMPLIANCE SECTION, THE OFFICE OF CIVIL RIGHTS, IS TO END THE DUAL SCHOOL SYSTEM IN THE SOUTH BY 1969. MANY CIVIL RIGHTS WORKERS CONTEND THAT THE NEW DEADLINE IS A DELAYING TACTIC BY THE GOVERNMENT AND THAT THE NEGRO COMMUNITY IS RAPIDLY BECOMING DISENCHANTED WITH THE GOVERNMENT'S DESEGREGATION EFFORTS. IN CONTRAST, FEDERAL SPOKESMEN FEEL THAT "REMARKABLE PROGRESS" TOWARD DESEGREGATION HAS BEEN MADE AND THAT SOUTHERN SCHOOLMEN HAVE SHIFTED FROM DEFIANCE TO COMPLIANCE. THE ARTICLE ALSO DISCUSSES THE OFFICE OF EDUCATION'S NEW REGULATIONS FOR THE TERMINATION OF FUNDS FROM SCHOOL DISTRICTS WHICH DO NOT COMPLY WITH THE GUIDELINES. THIS ARTICLE WAS PUBLISHED IN THE "SOUTHERN EDUCATION REPORT," VOLUME 3, NUMBER 6, JANUARY-FEBRUARY 1968. (DK)

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By Jim Leeson

Federal officials directing the government's enforcement of school desegregation guidelines have adopted a new approach and a new deadline to meet what they see as a more positive attitude of Southern schoolmen. Officials of the Department of Health, Education and Welfare now praise instead of condemn the attitude of Southern schoolmen toward solving the problem. HEW's reorganized compliance section, the Office for Civil Rights, has set new policies aimed at ending the dual school system by 1969.

Contrary views come from some of the representatives for the various private organizations working in the education area of civil rights. They believe the South has changed only its technique of defiance and they consider the government's new approach to be softer. These civil rights people supporting increased desegregation interpret the new deadline as a two-year delay. And they report that the Negro community is becoming disillusioned about the possibility of integration and is returning to the concept of improving their racially separate schools.

The secretary of HEW, John W. Gardner, spoke of "remarkable progress" during a couple of appearances in the South recently. In an interview at Chapel Hill, N. C., he expressed this view of the Southern school situation: "I think the South is now tackling the problem of desegregation with considerable energy and drive."

The head of HEW's compliance agency, Peter Libassi, was quoted as saying in Washington, "There's been a shift from defiance to compliance" in the South. Libassi continued, "We're finding greater readiness by school officials to negotiate compliance plans with us. It's an unbelievable shift."

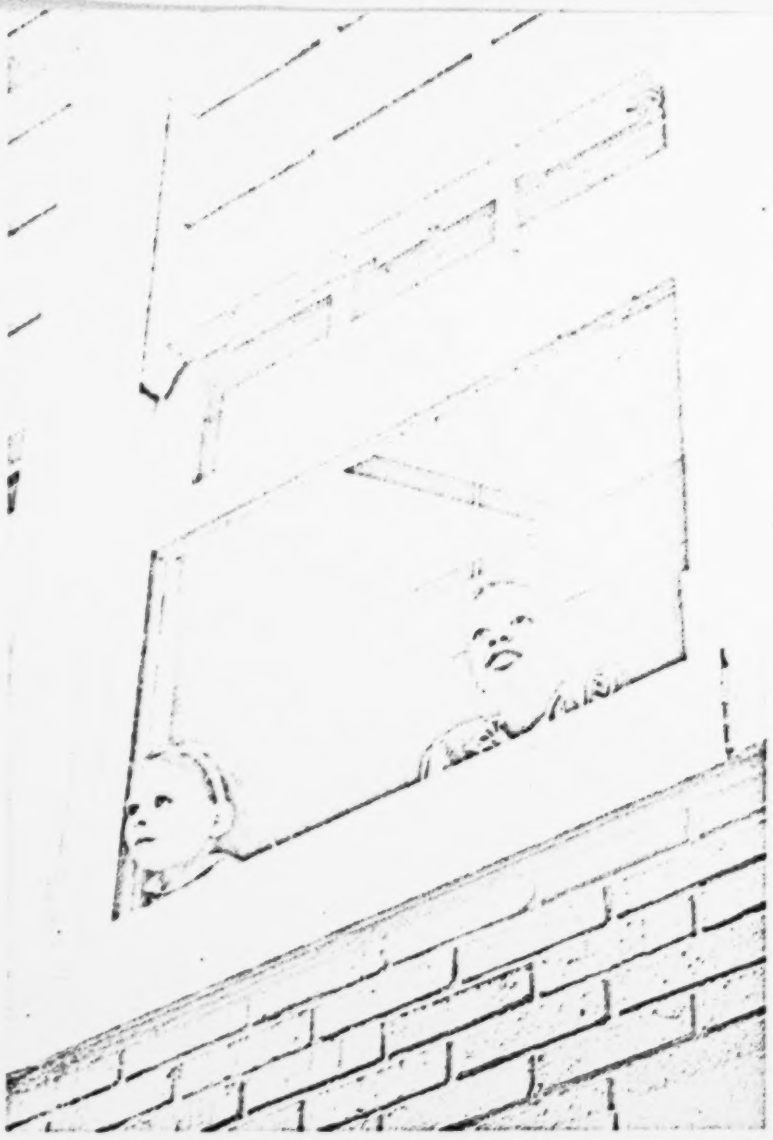
Civil rights workers in the South take a different view.

Hayes Mizell, who directs the Community Relations Program for the American Friends Service Committee in South Carolina, said of Libassi's statement: "It's exactly the kind of rhetoric we don't need in the South. Moderates will read it and think things are going pretty well. Meanwhile, thousands of Negro children are being victimized in segregated schools and being denied their constitutional rights."

Libassi came South to explain his agency's new policy to a group of Georgia educators. HEW will "not get as involved as we have been in the past in a counting numbers and percentage game," Libassi said, although he cautioned: "I don't mean to say we're not going to be interested in results, because we are."

"But the result that we're looking for is not numbers of children but a plan for the full and total elimination of the dual system."

Libassi has outlined HEW's new approach in several interviews and talks. Freedom-of-choice plans will be allowed to continue only in districts that are achieving desegregation. If the choice plan is not effective in eliminating a dual school system, local



school officials are responsible for developing an effective alternate. The best way for local districts to desegregate completely, he said, usually is by assigning pupils to the neighborhood schools nearest their homes.

Libassi has noted that the Civil Rights Act of 1964 and court decisions do not allow the Office for Civil Rights to withhold federal funds from Northern school districts because of *de facto* segregation caused by neighborhood schools. On the other hand, the legal picture is different for Southern districts. "The court decisions in the South where we have formally segregated schools by law are beginning to say that these school systems have the affirmative duty to so draw the attendance lines as to be sure that the segregated school system is in fact eliminated," Libassi said. He also has said that it is possible a district will be allowed to maintain an all-Negro school in areas where housing patterns dictate it.

A member of Libassi's staff, Mrs. Ruby Martin, director of the Operations Division for OCR, outlined the basic policy to be followed in the South by the educational staff. The Operations Division handles all field work and negotiations for schools, hospitals, social service agencies and other projects funded through the Department of HEW. Compliance officials will visit 350-400 districts with "inadequate" results under freedom of choice, approximately 100 districts desegregating under court order, and a limited number of districts that have signed the HEW-441 form but have "apparent patterns of segregation" remaining.

"The continual year-round interviews will help us to avoid the extraordinary workload we have experienced in past summers," she said in her staff memorandum. She listed three guides for the assignment to end the dual school system:

"A. September, 1969, as the target date for complete desegregation, urging one year earlier as conditions allow. Staff is authorized to indicate they will recommend the acceptance of plans that meet the target date, September, 1969. However, in some cases districts will be unable to meet the target date. Staff is not authorized to indicate that they will recommend acceptance of such plans. Plans that extend beyond the September, 1969, target date must be approved by the Regional OCR Director.

"B. De-emphasize bargaining over percentages and numbers of children and faculty members transferring from one school to another.

"C. Press for substantial faculty desegregation."

Mrs. Martin allowed for exceptions to the 1969 deadline:

"Where local conditions indicate it would be impractical to press for a publicly announced plan of 'total' desegregation, modified plans may be accepted if they include substantial desegregation for 1968, *e.g.* about 30 per cent."

Desegregation compliance has settled down to a problem negotiated between the school board and federal officials...

Libassi has been running HEW's new compliance agency since last spring, when the reorganization was announced and the education compliance duties were removed from the U.S. commissioner of education, Harold Howe II ["The New Look in Civil Rights Enforcement," by William Stief, SOUTHERN EDUCATION REPORT, September, 1967]. The operating regulations making the changeover official were not published in the Federal Register until late fall.

In addition to the changes of the organization, the regulation also provided a new procedure for cutting off funds to school districts not in compliance with Title IV of the Civil Rights Act of 1964. All decisions handed down by the federal hearing examiners will now be reviewed by a three-man tribunal of independent attorneys, instead of by a higher HEW official. Mrs. Martin said details were incomplete but that the lawyers probably would be selected from retired attorneys or law professors, mostly in the D. C. area.

This procedure removes Libassi from judging the cases he has prosecuted against noncomplying districts. The automatic review formerly required by the HEW secretary has become optional and Secretary Gardner can either choose to review a decision or to endorse it by refusing to review.

Another change provided in the new regulations requires HEW to grant another public hearing to school districts that have submitted a new desegregation plan after their funds have been cut off. This would occur, Mrs. Martin explained, when negotiations with the district had failed to bring it up to the standards expected by the civil rights staff.

HEW also can reimburse government witnesses for expenses they incur traveling to Washington to testify at cutoff hearings. Within the past year, HEW has experimented with conducting the compliance hearings out in the region, and this is being considered as a new staff policy, Mrs. Martin said.

Shortly before Congress adjourned in mid-December, Secretary Gardner announced a new policy for his department's termination of funds from noncomplying districts. Gardner described the changes in a letter to Sen. Wayne Morse, in an effort to end Southern opposition to the authorization bill for school aid. The secretary said that termination orders will not become effective between Sept. 1 and June 1 of the school year unless two conditions have been met:

- The school district has received a written notice prior to March 1 of the preceding school year that HEW has found indications of possible noncompliance.
- Notice of a noncompliance hearing has been mailed the school district by Sept. 1 of school year.

Gardner explained that under the new procedures, "94 to 95 per cent of the 4,600 school districts in the Southern and border states, assuming their good faith, would have an absolute assurance by March 1, six months prior to the beginning of the next school year, that they would not lose federal funds during that year. The remaining districts will have been advised at least six months in advance of the next school year of the alleged noncompliance and will have ample opportunity to correct that noncompliance prior to the opening of school."

Federal compliance officers intend a closer scrutiny of districts complying under federal court orders. Previously a district operating under court order has been considered to be in compliance although its desegregation status might be at variance with the department's guidelines. HEW has interpreted a restraining order issued by a federal court in Alabama as an "unleashing" order. The order, intended as a wrist-slap at HEW, specifically told Secretary Gardner to rescind his termination action against an Alabama district covered by the court.

But in its order, the three-judge panel said that although HEW could not cut off federal funds before consulting the court, the department has the authority

to determine whether there is "good-faith compliance" and call it to the court's attention. HEW already has begun to review the status of desegregation in the region's court-order districts.

Mrs. Martin emphasized in a telephone interview that negotiations will be a "one-shot deal" to develop a permanent plan tailored for each district. "We don't want to have to go back each year," she said. Her staff will go into such details as the district's number of schools, the capacity of each, projected building plans and other factors that would work toward eliminating the dual system.

"The districts are going to have to analyze their Negro facilities differently if they are going to eliminate the dual school system," Mrs. Martin said. She reported that this is the first year that districts have begun negotiating the desegregation of their Negro facilities and already "some pretty innovative ideas" have evolved—such as literally picking up the building and moving it to a new location, or changing the physical characteristics and name to alter the identify of the formerly Negro school in the community's eye.

Is the newly announced deadline of 1969 the first time Southern schoolmen have had a final desegregation deadline or does it represent another delay? The HEW guidelines for the past two years, and the spring ruling of the U. S. Fifth Circuit Court of Appeals that endorsed those regulations, called for the fall of 1967 as the "target date" for the desegregation of all grades. HEW officials insist that the 1967 deadline calling for the extension of desegregation to all grades is different from the 1969 deadline for ending the dual school system and thus is not a delay.

"I think it is just another delay," replied Hayes Mizell. "I cannot conceive that they will dismantle the dual school system in the South in two years. . . . It's not open defiance so much as HEW is not really doing anything."

Mizell says Southern schoolmen have changed their attitude in that they have recognized the reality of having to comply, but the HEW staff is "still engaged in real hard-nosed negotiations." Mizell sees one of the big problems in South Carolina to be the districts that have more than 50 per cent Negroes. "With these majority-Negro school systems, they are doing very little to meet this problem."

Dr. Herbert Wey, associate dean of the University of Miami School of Education, points out that HEW is in the process of studying these systems in Alabama, Florida, Georgia, Mississippi and South Carolina that have more than 50 per cent Negro enrollments. "More than half of these districts have lost their funds," Wey said. HEW recognizes that it has "a different problem with these counties" and that the "guidelines are not fair" when they cause predominantly Negro districts to lose their federal money, he said. "HEW is in the business of helping these districts, not taking their money away," Dr. Wey declared.

Desegregation compliance has settled down to a problem negotiated between the school board and federal officials, Mizell believes, but "the Negro community has no role or leverage in the desegregation process." All negotiations are behind closed doors, he says, and he reports that real reaction among Negro parents is that "the federal government has sold them out again. There is no involvement in the Negro community at all, no preparation of the community for what is going to happen. They are caught in a bureaucratic framework."

Similar reactions to HEW's new approach come from Miss Jean Fairfax, director of the Division of Legal Information and Community Service for the NAACP Legal Defense and Educational Fund. An influential figure behind the scenes at both the national and regional levels of race relations, Miss Fairfax sees a "general watering down of intent, regulations and the compliance machinery" of the HEW department.

"My general reaction is that deadlines in HEW's compliance program either have been ignored or reinterpreted so that they have become meaningless," she said. "If the '69 deadline is to have meaning, things should already have been done that have not," Miss Fairfax stated.

Southern schoolmen have changed "from overt defiance to subtle noncompliance," she observes. "Fewer kids are beaten up," she added. "The South has found a way of noncomplying," she said and she gave as an example "the rapid building of new schools in segregated neighborhoods, both white and Negro."

Miss Fairfax comes down hard on HEW for what she describes as "a general tiredness" in the agency's enforcement of desegregation in the region. HEW has shifted a large number of districts from the status of the HEW-441B compliance to that of HEW-441, indicating the desegregation process is complete. Coupled with this is the fact that the federal government's survey of school desegregation statistics this year will not include several hundred Southern districts in the HEW-441 category having less than a 3,000 total enrollment. Miss Fairfax observes:

"HEW wants to get out of the compliance business, even though desegregation is not taking place. They would welcome the chance to dump some district where they are not subject to review. I get the impression they are trying to decrease the compliance load where they can manage with a smaller staff and manage politically."

"Politics" is a word that comes up often in discussions of school desegregation. At a recent meeting on civil rights in Washington, many Southerners there generally decried what they called a softer approach by the federal government. HEW and its Office of Education, which formerly enforced compliance, were the subjects of especially bitter remarks, in both public and private gatherings. But the critics generally agreed that politics was the real villain. HEW can do only what the Congress and the White House wish, and they in turn react to the mood of the voting public.